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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 In re

Case No. 20-30819 DM

12 BENJA INCORPORATED

Chapter 11

13 Debtor.

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**CHAPTER 11 TRUSTEE'S STATUS
CONFERENCE STATEMENT**

Date: December 17, 2020
Time: 9:30 a.m.
Via Video/Teleconference

18 KYLE EVERETT, Chapter 11 Trustee (the “Trustee”) in this matter, files the following
19 status conference statement to update the Court and parties regarding the status of this matter.

20 **Background:**

21 The Debtor filed a voluntary Chapter 11 on October 15, 2020. The Court granted the
22 motion of Busey Bank for appointment of a Chapter 11 on October 26, 2020. The Office of the
23 U.S. Trustee (“UST”) sought the appoint of Kyle Everett as the Chapter 11 Trustee (ECF 44)
24 and the Court approved the appointment of Mr. Everett on November 3, 2020.

25 **The Trustee’s Investigation to Date:**

26 Since his appointment, the Trustee and his counsel have conferred with numerous
27 parties seeking information about the Debtor’s business and financial affairs. Information has
28 not been readily available. On or about November 23, 2020, the United States arrested

1 Debtor's principal, Andrew Chapin, and charged him with a criminal complaint, with charges
2 of bank fraud, wire fraud and securities fraud in connection with Debtor's business. On the
3 same date, the Securities and Exchange Commission ("SEC") filed a civil complaint against
4 Mr. Chapin and against the Debtor. The complaint alleges violations of the Securities and
5 Exchange Act (Section 10(b)) and seeks to enjoin the Debtor and Mr. Chapin from future
6 conduct and the disgorgement of funds obtained by said violations.

7 After some initial cooperation with the Trustee, Mr. Chapin has refused further
8 cooperation with the Trustee and will no longer answer questions about the Debtor's business
9 activity. The belated Schedules and Statement of Financial Affairs filed by the Debtor on
10 November 18, 2020 (ECF 50-57) are clearly incomplete. The Trustee has reached out to people
11 with some previous involvement in the business to obtain information but, other than from the
12 Debtor's banks who have been wholly cooperative, their assistance has been limited. The
13 Trustee is in the process of obtaining the files and communications from former counsels to the
14 Debtor.

15 Mr. Chapin did not appear at the Initial Debtor Interview scheduled by the UST and did
16 not appear at the initial or continued meeting of creditors. The Debtor's counsel recently
17 forwarded an email from Mr. Chapin resigning his positions with the Debtor.

18 Based on his initial review of available information, the Trustee has identified several
19 transactions that need further investigation. These transactions involve the transfer of funds
20 from the Debtor to third parties. The Trustee is investigating the basis for the transactions and
21 has sent litigation hold communications to various parties. The Trustee will follow up with
22 Rule 2004 examinations with related document production and anticipates that avoidance
23 litigation may be necessary to recover funds on behalf of the estate.

24 Based on the Trustee's investigation to date, there does not appear to be any remaining
25 business being operated or owned by the Debtor. There appear to be a number of related
26 businesses. Those businesses seem to be more in the nature of divisions or the Debtor doing
27 business under fictitious names. Again, the documentation and information is limited at best.
28 Based on the absence of any operating business, the Trustee anticipates a likely conversion of

1 the case to a Chapter 7 proceeding in the next 30-45 days, unless he discovers additional
2 information that might justify remaining in Chapter 11.

3 | The Trustee's Recommendations:

4 The Trustee will be in attendance at the status conference to answer inquiries from the
5 Court. At this point, the Court may wish to set a continued status conference in mid-January to
6 late January, which conference may be mooted by a motion to convert.

7 | Dated: December 10, 2020

FINESTONE HAYES LLP

/s/ Stephen D. Finestone
Stephen D. Finestone
Attorneys for Kyle Everett

1 I am over the age of 18 and not a party to this action. My business address is 456
2 Montgomery Street, Floor 20, San Francisco, California 94104. I caused a true and correct copy
of the following documents:

3 **CHAPTER 11 TRUSTEE'S STATUS CONFERENCE STATEMENT**

4 to be served in the manner stated below.

5 **1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

6 Pursuant to controlling General Orders and Local Bankruptcy Rules, service of the foregoing
7 was accomplished by the court via NEF and link to the document. On December 10, 2020, I
8 checked the CM/ECF docket for this action and determined that the following persons are on
9 the Electronic Mail Notice List to receive NEF transmission at the email addresses stated
below.

10 Jared Day on behalf of the Office of the U.S. Trustee

11 Jared.a.day@usdoj.gov

12 Paul Manasian on behalf of Benja Incorporated

13 manasian@mrlwsf.com

14 Tanya Behnam, Randye Soref, Jerry L. Switzer, Jr. and Jean Soh on behalf of Busey
Bank

15 tbehnam@polsinelli.com

16 jsoh@polsinelli.com

17 rsoref@polsinelli.com

jswitzer@polsinelli.com

18 Sophia Ashley Perna-Bank on behalf of E-Revshare Core, LLC

19 spernaplank@jaspanllp.com

20 Steven Soulios on behalf of XRC Fund III

21 ssoulios@lawnynj.com

22 **2. SERVED BY OVERNIGHT MAIL**

23 On December 10, 2020, I verified that the following persons and/or entities were served at the
last known addresses in this action by overnight Federal Express mail.

24 **3. SERVED BY EMAIL**

25 On December 10, 2020, I served the following persons and/or entities by email.

26 I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct. Executed on December 10, 2020, in San Francisco, California.

27 /s/ Stephen D. Finestone

28 Stephen D. Finestone